UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

IN RE:	.	Case No. 09-50026-reg
	.	Chapter 11
MOTORS LIQUIDATION COMPANY, et al., f/k/a GENERAL MOTORS CORP., et al,	.	(Jointly administered)
	.	One Bowling Green
Debtors.	.	New York, NY 10004
	.	Wednesday, August 12, 2015
	.	9:45 a.m.

TRANSCRIPT OF NOTICE OF MOTION AND MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL [13289];
THE IGNITION SWITCH PLAINTIFFS' AND CERTAIN NON-IGNITION SWITCH PLAINTIFFS' OBJECTION TO MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL [13344];
REPLY IN SUPPORT OF MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL [13353];
JUDGMENT SIGNED ON 6/1/2015 [13177];
MOTION TO WITHDRAW THE REFERENCE WITH REGARD TO NO STRIKE PLEADINGS FILED BY JASON A. ZWEIG ON BEHALF OF STATE OF ARIZONA EX REL. MARK BRNOVICH, THE ATTORNEY GENERAL, THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS [13213];
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW THE REFERENCE WITH REGARD TO NO STRIKE PLEADINGS FILED BY JASON A. ZWEIG ON BEHALF OF STATE OF ARIZONA EX REL. MARK BRNOVICH, THE ATTORNEY GENERAL, THE PEOPLE OF THE STATE OF CALIFORNIA, ACTING BY AND THROUGH ORANGE COUNTY DISTRICT ATTORNEY TONY RACKAUCKAS [13214];
(CONTINUED)

BEFORE THE HONORABLE ROBERT E. GERBER
UNITED STATES BANKRUPTCY COURT JUDGE

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TRANSCRIPT OF: (Continued)
MOTION TO WITHDRAW THE REFERENCE FOR THE IGNITION SWITCH PLAINTIFFS' NO STRIKE PLEADING WITH REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT; AND THE NONIGNITION SWITCH PLAINTIFFS' (I) OBJECTION PLEADING WITH REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT AND (II) GUC TRUST ASSET PLEADING [13250];
MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW THE REFERENCE FOR THE IGNITION SWITCH PLAINTIFFS' NO STRIKE PLEADING WITH REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT; AND THE NON-IGNITION SWITCH PLAINTIFFS' (I)OBJECTION PLEADING WITH REGARD TO THE SECOND AMENDED CONSOLIDATED COMPLAINT AND (II) GUC TRUST ASSET PLEADING [13251];
MOTION TO WITHDRAW THE REFERENCE OF MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL, AND (II) THE IGNITION SWITCH PLAINTIFFS', CERTAIN NON-IGNITION SWITCH PLAINTIFFS' AND THE STATES' OBJECTION TO MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL [13345]; MEMORANDUM OF LAW IN SUPPORT OF MOTION TO WITHDRAW THE REFERENCE OF (I) MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL, AND (II) THE IGNITION SWITCH PLAINTIFFS', CERTAIN NON-IGNITION SWITCH PLAINTIFFS' AND THE STATES' OBJECTION TO MOTION BY GENERAL MOTORS LLC TO ENFORCE THE STAY IMPOSED BY THE JUDGMENT, DATED JUNE 1, 2015, AGAINST THE STATES AND PLAINTIFFS REPRESENTED BY DESIGNATED COUNSEL [13346]

APPEARANCES:

For the Debtor:	King & Spalding LLP By: ARTHUR STEINBERG, ESQ. SCOTT DAVIDSON, ESQ. 1185 Avenue of the Americas New York, New York 10036 (212) 556-2100
For General Motors on behalf of participating unitholders:	Akin Gump Strauss Hauer & Feld LLP By: NAOMI MOSS, ESQ. One Bryant Park New York, NY 10036-6745 (212) 872-8010

APPEARANCES (Continued):

For the Ignition Switch plaintiffs and certain non-Ignition Switch plaintiffs:	Brown Rudnick LLP By: EDWARD S. WEISFELNER, ESQ. 7 Times Square New York, New York 10036 (212) 209-4917
For the Motors Liquidation GMC Trust Administrator:	Gibson, Dunn & Crutcher LLP By: LISA RUBIN, ESQ. KEITH R. MARTORANA, ESQ. 200 Park Avenue New York, New York 10166-0193 (212) 351-4000

TELEPHONIC APPEARANCES:

For Designated Counsel:	Stutzman, Bromberg, Esserman & Plifka, P.C. By: BRIANA L. CIONI, ESQ. DAVID J. PARSONS, ESQ. 2323 Bryan Street, Suite 2200 Dallas, TX 75201 (214) 969-4900
For Plaintiff The Ignition Switch:	Leiff, Cabraser, Heimann & Bernstein By: ELIZABETH J. CABRASER, ESQ. 275 Battery Street, 29th Floor San Francisco, CA 94111-3339 (415) 956-1000 Hagens Berman Sobol Shapiro LLP By: ANDREW VOLK, ESQ. 1918 8th Avenue, Suite 3300 Seattle, WA 98101 (206) 623-7292

(Proceedings commence at 9:47 a.m.)

THE COURT: Good morning. Have seats. All right. We are here on new GM's motion to enforce the judgment, more specifically to stay efforts to withdraw the reference. I know the guys who I think will be the principal speakers today.

I don't have a whole lot in the way of opening remarks. It seems to me this is all about Paragraph 16 of the judgment. Its general rule covers a bar against litigation in other places, but it has a clause in it, I'll call it the savings clause, that says "to the maximum extent permissible under the law" or words to that effect, so I want both sides to talk about that.

I also want you to talk about Wellness, which although it doesn't go by way of holding to address this issue, has any number of assumptions in it which may be relevant to this controversy.

So with that said, I'll hear first from you, Mr. Steinberg, and then from Mr. Weisfelner, with the usual opportunities to reply and surreply.

MR. STEINBERG: Good morning, Your Honor.

On July 10th, new GM filed its motion to enforce the stay imposed by the June 1 judgment against the states and the plaintiffs represented by the designated counsel for impermissibly filing the motion to withdraw the reference with respect to their no-stay pleadings.

We think the judgment is fairly -- is clear that these actions that the plaintiffs have and the states have are generally stayed except for the -- to the extent that the judgment allows them to go forward. And they are prohibited from taking any further actions, except they can amend their complaints to strike the provisions that were proscribed by the judgment to only assert independent claims or/and they could file a no-strike pleading.

Now, with Paragraphs 11 and 12, 11 dealing with the hybrid lawsuits, Paragraph 12 dealing with the states, provided where the pleading, that no-strike pleading should be filed. It said to be filed in the bankruptcy court. It also said that the Court would schedule a hearing thereon, and Paragraph 16, which Your Honor referred to, said that the Court will retain exclusive jurisdiction to handle this controversy.

And in response to a concern that new GM had expressed that the states may not amend their complaint and move forward and try to enforce their claims, arguing that they had independent claims, Your Honor added a couple of sentences to Paragraph 16 which essentially said that the judgment cannot be collaterally attacked or otherwise subject to review in any court other than this court or any court exercising appellate authority. Appellate authority --

THE COURT: Pause, please, Mr. Steinberg. Am I correct that until and unless the circuit or whoever takes the

appeal modifies or reverses the judgment, whatever happens in the steps to follow, with or without withdrawal of the reference, take my judgment as a given?

MR. STEINBERG: Yes.

THE COURT: So it's a little different than the usual collateral attack. It's not like going off to a South Carolina state court, no disrespect to South Carolina, and saying forget about that stuff that Yankee told you up in New York. Isn't Judge Furman as capable of complying with the rule of law as I am?

MR. STEINBERG: I think Judge Furman, as well as a judge in South Carolina, is capable of complying with the rule of law as you have. The issue is is whether, when a court returns exclusive jurisdiction to interpret its judgment and to enforce the injunctions that are embedded in its judgment, whether it should have that right in the first instance to do so.

Frankly, that's the Celotex case. In Celotex, the Court -- the Supreme Court said that as long as the bankruptcy court properly exercised jurisdiction and had an injunction binding parties, that the parties are required to go back to the bankruptcy court to interpret its injunction before they could seek relief anywhere else. And in Celotex, it was the district court that they wanted to move forward on in connection with enforcement of a supersedeas bond, and the

Court said that it was related to jurisdiction in the bankruptcy court, injunction was properly issued, and the -- and whether or not the action was appropriate, you had to go to the bankruptcy court first.

So, Your Honor, the other thing that I was going to state with regard to Paragraph 16 is that you had said that unless it's a court exercising appellate authority, if the district court withdraws the reference, it is not exercising appellate authority. That was how I interpreted Your Honor's Paragraph 16 and what you were intending to --

THE COURT: Well, I think it's clear that when a district court withdraws the reference, it is not exercising appellate authority, but it's still at least arguably exercising some authority that it has by either statute, the constitution, or both.

MR. STEINBERG: Right.

THE COURT: And that's why I need both you and Mr. Weisfelner to address the entirety of Paragraph 16.

MR. STEINBERG: I will. So the first argument, Your Honor, is that there was a stay, and that the stay required them to not take any action other than the actions in the bankruptcy court, and they violated that by filing the motions to withdraw the reference. Their argument, which is that the judgment doesn't prohibit filing motions to withdraw the reference, is really an improper argument because the judgment

stays their actions except for two exceptions. And this is most clearly seen in connection with the states and why they're moving to withdraw the reference in the first place, and I think you need to -- that needs to be taken into account, as well, too.

Your Honor, in your May 27th decision, said that notwithstanding what the states' position was, the states have asserted claims or have proffered a complaint that is violative of the sale order, and that they said to them, you're required to amend it, and if you don't amend it, then you're going to be stayed until the federal process relating to the judgment is concluded. And that was the reason why those sentences were added to Paragraph 16.

The states did not amend their complaint, but they immediately moved to withdraw the reference, which is in essence trying to reargue, in the context of a no-strike pleading, that which Your Honor has said needed to be changed. That's the reason why they're moving to withdraw the reference.

Now, Your Honor had carefully said in the judgment that the no-strike pleadings aren't supposed to be re-argument pleadings, and so they knew they couldn't argue those pleadings in front of Your Honor and so they moved to withdraw the reference to try their shot at another judge. I mean, that is forum shopping.

Same thing with regard to the complaint filed by the

designated counsel. Your Honor entered your judgment on June 1. Everyone knew that the complaint that was filed in the district court was going to be amended by June 12th. There was a pre-sale consolidated complaint and a post-sale consolidated complaint that was filed at the time that the judgment was entered, and was frankly what Your Honor had analyzed in connection with looking at the old GM claim threshold issue, which was part of the four threshold issues.

And so what do they do on June 12th? They essentially merge the presale consolidated complaint, which under the judgment is supposed to be stayed. They merged it into the -- into this new complaint. If there are 135 named plaintiffs in the new complaint, 63 of them were the same plaintiffs that were in the pre-sale consolidated complaint relating to old GM vehicles that was supposed to be stayed.

It also included another 40 plaintiffs, people who purchased old GM vehicles after the 363 sale unrelated to new GM. So those are the, in the context of Your Honor's judgment, the used car purchases. Also, those claims were proscribed.

So in the second amended complaint, of the 135 plaintiffs, more than 100 plaintiffs are related to people who were in the pre-sale consolidated complaint or dealt with old GM vehicles on a used-car basis that was proscribed by the judgment. The --

THE COURT: I well understand your annoyance with

that, but with that given, I don't fully understand where the locale by which that tourism is brought to judicial attention makes a difference. It would seem to be -- Judge Furman is a pretty smart guy. I can see how that point would be as obvious to him as it is to me and probably to you.

MR. STEINBERG: Well, Your Honor, if Judge Furman had decided the motions to withdraw the reference, which are sub judice in front of him now, before we had this hearing today, this hearing would be rendered moot. This was done because -- and Your Honor's point, which is can't Judge Furman understand what's going on and can't he administer justice, it's hard for me to disagree with that point. But the reality is, is that they violated your stay. They weren't supposed to do what they did, and they did it for an improper purpose.

And Wellness -- and I'll turn to Wellness now -- doesn't give them any comfort in what they're doing. Wellness actually held that if you consent to bankruptcy court jurisdiction, that the Court can administer claims even if they otherwise would be proscribed by Stern v. Marshall. So there was a consent to jurisdiction aspect of Wellness that said that the bankruptcy court's jurisdiction would be adhered to.

Here, in the context of the motions to enforce that we brought, there were immediately done stay stipulations that were entered by the states and were entered by people who the designated counselor represent, people in the underlying

actions. Those stay stipulations provided that the plaintiffs agreed that they would not prosecute their action against new GM subject to further order of the bankruptcy court during the interval.

Now, the interval was defined in these stipulations as 30 days after a final order is entered resolving all issues raised in the motions to enforce, then pending those strike pleadings are related to the motions to enforce. They haven't been decided yet, so we're still within the interval, and they've consented to the jurisdiction of the bankruptcy court with respect to their actions and for the determination of all issues relating to the motions to enforce. The stay stipulations also provide that the plaintiffs acknowledge that the stay stipulation would terminate when and only to the extent that the bankruptcy court grants relief from the stay of their action.

Now, so they have consented to the bankruptcy court's jurisdiction, which is what Wellness says, that if that happened, then the bankruptcy court can appropriately exercise that jurisdiction and the matters can go forward there. There is nothing in Wellness that suggests that they have a constitutional right to ask an Article III court to interpret an Article I court's injunction. Celotex said the opposite.

So if Your Honor were to ask why is Wellness not applicable, I think Wellness actually supports what we have

because of the consent to jurisdiction. But beyond that, this is not a merits adjudication, which is what was underlying some of the claims in Stern v. Marshall. This is whether only the claims that are being asserted on its face violate an existing injunction that the Court entered in 2009 and carried forward in the 2015 judgment.

Also, the parties' actions were stayed except for some limited acts going forward, so they weren't supposed to do what they did. That's not Wellness. Wellness didn't deal with that at all, with a party violating the injunction and then asserting a right to do it. It is a little like what happened here originally, right? They were supposed to come to Your Honor before anything and they didn't. They started their actions all over the country, knowing that they were in violation of the 2009 injunction.

When the motions to enforce were brought, they recognized that they had this issue and they immediately agreed to stay stipulations and agreed that Your Honor would be the one to determine those issues. They consented to Your Honor's jurisdiction. We filed lengthy briefs. Your Honor wrote a lengthy decision. And in the context of entering a judgment, in order to make sure that there was clarity as to whether actions can go forward or not before you ultimately turn the matters over to the other courts, Your Honor had a mechanism, which we had asked you to adopt -- they didn't want it, we did

-- to essentially clarify what can go forward and what can't go forward in the context of specific complaints and specific allegations.

Your Honor, in the threshold issue -- on the old GM threshold issue, dealt with this thing on sort of a macro basis, but the purpose of the no-strike pleadings is to turn it on a micro basis with respect to specific complaints that had not been properly amended to conform with the judgment. That was a continuation of everything that had been set forth for the last year and a half.

To argue now that this now matter should be shifted to the district court for a withdrawal of the reference is improper, and the idea that they should be able to ask for it when they agreed that they wouldn't ask for it is improper, as well, too.

So Your Honor I think is asking me why am I making a big deal out of this, and I guess it's because I think when people violate a court's injunction and then try to do something, what I think is for improper purposes, for purposes of rearguing things that they couldn't argue in front of you because it's already been decided --

THE COURT: Well, I think both sides are making a big deal of this thing. Your opponent's move to withdraw the reference, obviously both sides think they're representing their clients because they don't want to be litigating before

me. Then you bring a motion here because you don't want them litigating before Jesse Furman. Then they bring a second motion before Jesse Furman so that I can't even hear what I'm doing today.

Can you understand -- I guess I should say can you all understand, because this goes to Mr. Weisfelner as much as it goes to you, how a guy like me who cares not about representing a client but only about institutional concerns, feels about this chess game?

MR. STEINBERG: Well, Your Honor, I certainly understand the procedural quandary that has been set up, but really it is not a procedural quandary of our making. We come to Your Honor not because necessarily we think we're going to get the best decision possible, but because that's what the prior orders have said should have happened.

Your Honor had reserved exclusive jurisdiction. The issues were before Your Honor. And frankly, in connection with enforcing the judgment and what was contemplated by the sale, Your Honor is the best one to understand that. I actually think Judge Furman understood that, as well, too when he deferred to your jurisdiction to decide the threshold issues.

And even in the context of the MDL proceeding, he has said Judge Gerber has a familiarity with that, and I think in Your Honor's May 27th decision, you said you have a familiarity with that, as well, too.

You're the best one in the first instance to interpret the judgment, and the orders that were entered and the judgment that was entered require that to happen. And if someone is now trying to circumnavigate around that, then that's the person who I think the spotlight should be on, not the person who's trying to preserve the status quo that had been set up.

And the fact that they're doing it now with everyone, it just means that if you continue to do something that's wrong, and you do it over and over again, does that somehow insulate it and dull the senses as to whether it was appropriate or not.

This was frankly a surprise to me of moving to withdraw the reference, and frankly some of the no-stay pleading concepts was done to protect designated counsel from the Gary Pellers of the world who would argue that you did something that you shouldn't have done.

So we set up a concept that if anybody wanted to raise an issue and have a second chance to come before Your Honor to be able to do it, it wasn't to give them -- it certainly wasn't giving a chance to do it a second time. It certainly wasn't done to give the states a chance to do it a second time.

I don't know what the argument is when Your Honor wrote clearly that the states had to amend the complaint, and

they chose not to do it when they filed a no-strike pleading, which is essentially an entire re-argument, which they're not supposed to do either, and then they said, I want to take it to another court, why I'm criticized at all for saying what you've done is wrong, what you're trying to do is wrong.

And we were before Your Honor, I don't know, must have been six weeks, two months ago, and Your Honor said you wanted to know what was going on in the other courts and you criticized both sides for not immediately telling you what was going on in the other courts. And so we have been much more assiduous in trying to do that. But part of the bringing of this motion was to tell you what was going on, what was going on and how people were trying to work around your judgment in what we felt was an improper way, and that Your Honor should stop it.

Now, I understand we're putting you in a difficult position, and frankly, if Judge Furman had denied the motions to withdraw the reference, then this would have become moot. But clearly they're doing something wrong, and it was incumbent on us to be able to say it.

I'll conclude, Your Honor, with referring to something that you said in your May 27th decision. You talked about -- in the context of the purpose of the no-strike pleading is to determine whether new GM's position of the plaintiffs is correct.

They argue that they have $10 billion worth of claims. We would argue that most of that is barred by the judgment. So Your Honor is going to determine whether the particular claims that they say now survive are subject to the judgment or not, and the Court said, in the context of the states, that compliance with the sale order and the judgment are not matters for the plaintiffs to unilaterally decide on their own, are matters within its purview. The Court cannot permit a disregard of its orders and judgments or end runs on its jurisdiction.

The motion to withdraw the reference, even though it's to the district court and where you sit, is a collateral attack on your judgment, and it's an end run around the judgment to assert re-argument positions and to assert positions that Your Honor has preliminarily dealt with and they have not dealt with.

Your Honor told the states to amend. They chose not to amend, and the notion that they're not going to amend and they're going to file a pleading and then try to get Judge Furman to deal with it when Your Honor had said that you otherwise are stayed until the appellate process is resolved is I think a direct confrontation to what happened here. And they want to say, we want to get away with it, and we're saying they shouldn't be able to get away with it. Wellness has nothing to do with the fact that if a party violates a stay issued by an

Article I court where the Court has jurisdiction and the parties consented to jurisdiction, Wellness does not prevent Your Honor from enforcing your own judgment. Thank you.

THE COURT: Thank you. Mr. Weisfelner.

MR. WEISFELNER: Your Honor, I want to take an opportunity to address Paragraph 16, Celotex, Wellness, and some of Mr. Steinberg's arguments, but I want to start with where I think we need to start, and that is procedure.

As I think Your Honor knows, and as you commented during Mr. Steinberg's remarks, plaintiffs have filed a motion to withdraw the reference with regard to their motion to compel. That's been docketed before the district court. It was opened on August the 7th. Judge Furman has been assigned to the motion to withdraw the reference on the motion to compel.

THE COURT: By that you mean a motion to withdraw the reference and the very thing I'm hearing now.

MR. WEISFELNER: Correct. And GM's response is due on August 19th, and the matter will be fully briefed in advance of the next hearing before the MDL court on August the 28th.

Your Honor, most, if not all, of Mr. Steinberg's arguments were proffered in opposition to our motion to withdraw the reference of the no-strike pleadings. They are just as well argued before Judge Furman in opposition to our substantive motion to withdraw the reference.

THE COURT: Are you talking about your first motion to withdraw the reference --

MR. WEISFELNER: Yes.

THE COURT: -- or the second?

MR. WEISFELNER: The first.

THE COURT: Because, as you know, Bankruptcy Rule 5001 says that a motion to withdraw the reference doesn't stay proceedings in the court below, which means that I have the right to keep going today.

MR. WEISFELNER: Well, Your Honor, with all due respect, I'm not sure that that's the --

THE COURT: Every time I hear "with all due respect" from you, Mr. Weisfelner, it really gets on my nerves.

MR. WEISFELNER: Okay. I withdraw the comment then, and I'm sorry it gets on your nerves. But frankly, Judge, you are interpreting the rule wrong, and you're interpreting the rule wrong not in my judgment but in the opinion of other courts that have considered it.

Yes, the bankruptcy rule says that a motion to withdraw the reference doesn't otherwise upset Your Honor's jurisdiction with regard to a pending bankruptcy case or the proceedings within that case, but courts have uniformly determined that on a motion to withdraw the reference on a specific narrow procedural issue within the context of a case, let alone in the context of the bankruptcy case that's been

confirmed and consummated, the question of whether Your Honor continues to maintain jurisdiction on a specific issue that's already pending before the district court I suggest, notwithstanding the rule -- and I would have said with all due respect, but I won't because it angers you -- Your Honor interprets the rule incorrectly. If Your Honor were to rule today either way --

THE COURT: Lower your voice, Mr. Weisfelner.

MR. WEISFELNER: If Your Honor were to rule today either way, you would have served to moot the consideration by Judge Furman of this issue. Moreover, if one wants to worry about the procedural integrity of the process, which I think needs to be paramount, if Your Honor would have ruled in favor of new GM and determined that we are to be compelled to withdraw our motion to withdraw the reference, my guess is we would appeal. The appeal would go to Judge Furman and we'd be in a circulatory waste of time, energy, and money.

Now I want to address the questions that Your Honor posed. Paragraph 16 of Your Honor's judgment of course provides that the court, meaning this court, shall retain exclusive jurisdiction, to the fullest extent permissible under law. Now, Your Honor, just as we know as bankruptcy practitioners that oftentimes the word "debtor-in-possession" or the phrase "debtor-in-possession" is co-extensive with the phrase "trustee" as far as the code is concerned.

Well, frankly, references to the bankruptcy court have to, under certain circumstances, be deemed to be a reference to the district court in which the bankruptcy court operates. That's what we've learned in connection with constitutional challenges to Article I judges' jurisdiction.

And what Wellness says -- not that it's a brand-new concept, but what it says clearly is that the constitutional integrity of the bankruptcy courts is dependent on the fact that all matters before the bankruptcy court are thereby referenced from the district court, and that reference may be withdrawn sua sponte or by request of a party in interest.

So when one reads the phrase "the court," it's always with the backdrop that the bankruptcy court enjoys its jurisdiction by reference from the district court, and parties always retain the right to seek to withdraw that reference. It's not an absolute right.

If Mr. Steinberg is so convinced of his arguments about the impropriety of withdrawal of the reference, he has already argued that to Judge Furman and he can appeal to Judge Furman to deny the motion to withdraw the reference. Instead, he wants to do an end run here and hope to appeal to Your Honor and say, you know what, Judge, they violated a stay.

Well, Your Honor, you can read Your Honor's judgment, both the April 15th version and the June judgment that enforced the decision, and nowhere in that set of documents has Your

Honor said a word about preventing parties from exercising what I would assert is an absolute constitutional right consistent with the mandate and the establishment of the bankruptcy courts to permit parties to seek to withdraw the reference.

I did not think I would have to come here today and defend the merits of the no-strike pleadings. I thought what I was here today to do was to defend our constitutional right under 157 to seek to withdraw the reference. Mr. Steinberg has a right to argue against it, and if he is right, for whatever reason, Judge Furman will deny the motion. And then, of course, we're here on the no-strike pleading. We think we have fundamental rights and reasons for going in front of Judge Furman.

Just to cut through it, even though this shouldn't be an argument on the merits, the question that's being posed when you cut through all the procedural shenanigans is whether or not the second amended consolidated complaint does or does not violate Your Honor's judgment. In our view it does not. In fact, it's consistent with Your Honor's judgment in that it asserts claims and causes of action against new GM, and only new GM, that are predicated on only new GM's wrongful conduct and bad actions and does not pursue new GM on the theory of successor liability or anything akin to it.

THE COURT: Does it rely on paragraphs in the complaint, allegations in the complaint, that deal with

underlying old GM conduct?

MR. WEISFELNER: To a certain extent, yes, it does. It talks about --

THE COURT: And --

MR. WEISFELNER: -- conduct of old GM, but it doesn't --

THE COURT: All right. Well, that then would require a judicial determination by some judge as to whether that is within or outside the ruling because I take it you don't quarrel with the idea that the further proceedings are not a substitute for an appeal.

MR. WEISFELNER: Oh, absolutely right. Further proceedings is not a substitute for the appeal. In our judgment, what the judgment does is tell us that claims against new GM that relate to their own conduct that we think is violative of the law --

THE COURT: Their being new GM?

MR. WEISFELNER: New GM. Is permissible, and we assert, notwithstanding his characterization, Mr. Steinberg's characterization, that that's exactly what the second amended consolidated complaint does. He's going to suggest that it doesn't do that.

Now, when you think about it in terms of judicial economy and other concerns of the process, you have a complaint that is pending in front of Judge Furman. It has been the

subject of multiple motion practice, and he has been living with that complaint -- well, since June 12th when it was first filed, but its predecessors for a long time prior to that.

There is discovery ongoing with regard to that complaint. There are bellwether trials that are scheduled with regard to that complaint. There is discovery and contested discovery practice going on with regard to that complaint. And Your Honor, again, not to pick and choose between which court is most capable. The question in our mind is not who's more capable of making the decision. It's who ought to make the decision given where the case is pending, and who it's in front of, and who's been living with the complaint, and more importantly will have to live with the complaint for a very long period of time.

Now, again, that's the merits, and Judge Furman may ultimately determine that that's not enough for him to want to withdraw the reference. Judge Furman may ultimately decide that this matter is better determined by Your Honor. Now, Your Honor, again I believe that you're not the right court to make the determination, and I'll give you the reasons why, or at least part of them.

As Your Honor well recognized, in connection with your determination of the four threshold issues, you were determining those four threshold issues as they related to designated counsel and their underlying clients. Specifically,

your judgment didn't relate to the states specifically because they weren't part of the proceeding. Specifically, your judgment didn't relate to non-ignition switch plaintiffs because they weren't part of the proceeding. But, nevertheless, part of your June judgment took your April 15th decision and applied it to parties that weren't before you on the threshold issue.

That's the position the states find themselves in. That's the position that the non-ignition switch plaintiffs find themselves in. And frankly, Your Honor, when Your Honor interpreted the states' complaints in connection with the four threshold issues that they weren't a party to, that they never had an opportunity to discuss or contemplate, frankly, it was surprising to the states of Arizona and California.

But that's neither here or there, and I want to avoid getting embroiled in merits because at some point some court, Your Honor or Judge Furman, will make a merits determination. What we're here to talk about is whether or not there is anything in Your Honor's decision, judgment, anything in the case law, anything in the statute that says that a party can be prohibited from exercising its rights to withdraw the reference.

THE COURT: Pause right there, please, Mr. Weisfelner. Unless I missed it, I did not see a case by either Mr. Steinberg or by you that's clearly addressed whether

the Article I judge has the ability to stay parties from moving for a withdrawal of the reference before an Article III judge. Are you aware of any?

MR. WEISFELNER: Your Honor, I've been doing this for a little bit over 30 years, and I will tell you that not only haven't I found anything in our research, but this is a first for me. I've never seen a party sought to be compelled to withdraw a motion to withdraw the reference. And the only predicate is Mr. Steinberg's contention that somehow we violated Your Honor's judgment.

And in particular he relies on Paragraph 16, and the problem with his reliance on Paragraph 16 is, as Your Honor noted when you drafted this, the Court retains exclusive jurisdiction to the fullest extent permissible by law. Well, what did that section mean other than to the extent that parties exercise their right to seek to withdraw the reference? Not the right to have the reference withdrawn, the right to seek to have the reference withdrawn.

All of Mr. Steinberg's arguments were put in opposition papers before Judge Furman where they're pending. He sought to take another bite of the apple and argue the exact same thing to you in advance. He's the one looking for a tactical benefit. He submitted, as he had to, to the jurisdiction of Judge Furman when he responded to our motion to withdraw the reference, but I guess he wanted to hedge his

bets. Rather than wait for Judge Furman to rule, he ran to you to say stop the music. Don't let Judge Furman rule. He wants you to determine that Furman's decision on this is moot because you're going to decide it first.

On the same basis, the parties have already joined issue. And, Your Honor, yes, it's embarrassing, frankly, for us to have to have filed a motion to withdraw the reference on his motion to compel. As I said when I was before you once before, it feels like an Atari game of ping-pong, and the ping-pong won't end because if Your Honor were to grant Mr. Steinberg's motion, I believe my clients will direct us to seek an appeal, and the appeal will go to Judge Furman in any event, and we've wasted a lot of time and a lot of energy.

And, Your Honor, I will tell you the last time we were here, we told Your Honor we had a meet and confer to seek to see if we can't stop the ping-pong ball from bouncing. The meet and confer was delayed until we could get a transcript of some of Your Honor's commentary that came in response to some of the inquiries we had made about GUC trust pleadings and the possibility of a settlement.

I would have thought that Your Honor's commentary about not wanting to step on Judge Furman's toes and about not wanting to be in this procedural morass that you now find yourself in would have been enough to motivate new GM to allow this to be decided on the merits in front of Judge Furman, but

I was wrong. Again, there's no downside to them. They've made the same argument to you, the same argument to you, that they made to Judge Furman. And if they lose here, they have a second bite at the apple. And, Your Honor, I think it's their gamesmanship that's inappropriate.

And again I get down to the basics. They can argue all day long that the second amended consolidated complaint somehow violates your judgment, and if Judge Furman agrees with our motion to withdraw the reference, he'll make that determination. If he doesn't, he's in essence asking you to make that determination, a determination that I think is not as simple, quite frankly, as asking the question, do you have paragraphs in the complaint that relate or refer to old GM conduct.

I don't think that's the issue. You can have paragraphs that relate to old GM conduct as part of your general background and allegations so long as your claims and causes of action are only against New GM in a non-successor liability framework that only seeks to hold them liable for their own -- their being New GM's -- independent actions and conduct, which is what the second amended consolidated complaint, in my opinion and the opinion of our -- the counsel, does.

But some Court is going to have to make that determination because GM refuses to concede it. So it's either

going to be made by Judge Furman in front of whom the second amended consolidated complaint is pending, where he has original and exclusive jurisdiction, or it'll be made by Your Honor, depending on how Judge Furman decides the motion to withdraw the reference.

Again, I have seen no case law that supports the proposition that a party can be precluded from seeking to withdraw the reference. There's nothing in the statute. There is nothing in any case law we've found, and more importantly, wellness mandates, as has the case law going all the way back to Northern Pipeline, that the constitutionality of the federal bankruptcy court system relies in no small part on -- you could call it a fiction, but I think it's much more than that -- the notion that all matters that are before the bankruptcy court are there by virtue of a referral from the Article III district courts. And those district courts may, sua sponte or on motion of a party, seek to withdraw it.

And, Your Honor, frankly, we called King & Spalding yesterday because we thought, given the pendency of our motion to withdraw the reference on today's motion, that this matter wouldn't be going forward. But lo and behold new GM said, no, they want to press their luck. They want to take a shot to see if Your Honor will sustain their objection before they have to have Judge Furman consider sustaining their objection.

Understand, Your Honor, new GM pays for all this

legal wrangling. Class action counsel and designated counsel don't get paid to do this except to the extent that we ultimately prevail. This is not fun for us. This is being done in response to an unprecedented and we think unsubstantiated motion to compel us to withdraw our motion to withdraw the reference.

Your Honor, we think it's procedurally inappropriate, we don't think there's any substantive basis upon which they can proceed, and we'd ask Your Honor to please defer the entire argument that New GM just made to you, to Judge Furman, where the matter is properly pending.

Thank you, Judge, unless you have any questions.

THE COURT: No, no further questions. Mr. Steinberg?

MR. STEINBERG: Your Honor, Mr. Weisfelner has framed my argument as only being about Paragraph 16, and I want to call your attentions to paragraph -- Paragraphs 11 and 12 of the judgment. Paragraph 11 says, after the first sentence, which defines what hybrid lawsuits are, it says:

"Accordingly, until and unless the complaint in a hybrid lawsuit is amended to assert solely claims and allegations permissible under the decision in this judgment as determined by this, or any higher court if necessary" -- which hasn't happened -- "or is judicially determined not to require amendment by this or any higher court, the lawsuit is and shall

remain stayed."

And then in the other paragraphs in Paragraph 11, they talk about the no-strike pleading filed in the bankruptcy court, with the bankruptcy court scheduling a hearing if there's any issue.

So this is not again about a constitutional issue about whether they have a right to withdraw the reference. They consented to the jurisdiction of this Court to determine these matters. The matters have not been fully determined and they're stayed. They're stayed only for a couple of acts, and what they did was beyond those couple of acts.

Now, Your Honor, I think in the -- refer to the bankruptcy rule, it's Bankruptcy Rule 5011 --

THE COURT: Is it 5011 and 5001? You may be right.

MR. STEINBERG: It's 50 -- I think it's 5011.

MR. WEISFELNER: I think it's 5011, too.

THE COURT: Okay. All right.

MR. STEINBERG: And 5011 clearly provides that the case, that a matter is not stayed, a proceeding is not stayed. There's not this requirement that Mr. Weisfelner is introducing. The proceeding is not stayed. The Court could stay it on its own if it wanted to, but the matter is not stayed and courts can go forward notwithstanding the pending of a motion to withdraw the reference.

So -- and then he's -- and then Mr. Weisfelner said,

the cases are unanimous that they -- this is interpreted as an automatic stay. Well, he didn't cite one case that said that and he didn't move for a stay. He wants to talk about procedure. I actually don't know what he's talking about. I mean, I know what the rule says, and I know I've been in a situation where I had to familiarize myself with the rule because, on a motion to withdraw the reference, the district court held it for two years, and matters were going forward in and bankruptcy court hadn't decided the matter.

So on a procedural basis, this case is different than what he talks about as his constitutional right is because there was a stay in effect. Paragraph 12 is the paragraph that deals with the states, has exactly the same language. The matters are stayed except for the filing of a no-strike pleading in this court. That's what the Paragraph 16 then governs overall, which is the Court has exclusive jurisdiction to interpret its judgment, but the judgment is Paragraphs 11 and 12, which says, the action relating to the remainder of the motions to enforce are going to be in the bankruptcy court.

That doesn't mean that the district court can't sua sponte move to withdraw the reference. I wasn't quarreling about position. But it does mean that they're restrained from certain acts. Now, in a different context, Your Honor had said to a different plaintiff in this case, and I think it was Gary Peller, that you are to withdraw your request to amend the

complaint to assert a class action.

THE COURT: Well, wasn't that in the District of Columbia?

MR. STEINBERG: Yes.

THE COURT: And nobody would have contended that a motion to withdraw the reference could be brought before that district judge in D.C.

MR. STEINBERG: That's correct. It was just -- that's correct.

THE COURT: So while I agree with you on what you just said, I'm not particularly clear on why it should apply to a situation such as this one.

MR. STEINBERG: I was drawing an analogy. Clearly, it wasn't a motion to withdraw the reference circumstance, but it was a motion to amend. Most parties have a free right to amend, and they have a constitutional right to ask for an amendment, unless it was subject to some over -- countervailing order that was entered that prevented certain actions from taking place.

In the Peller case, they were under an injunction not to start a litigation and not to continue a litigation. Here, they are under a stay not to do anything else other than to challenge whether what they did was correct in this court, and then they could take it up on appeal. Then the district court will have the benefit of Your Honor's learning on whether what

they did was incorrect.

Now, I know you don't want to do and I'm not trying to do a merits argument on what's -- the motion to withdraw the reference. But they -- the damages that they seek under the second amended complaint is for anybody who was a new GM vehicle owner or an old GM vehicle owner, and whether the old GM vehicle owner was recalled or not recalled. They're seeking damages for 70 million cars, and if they want to argue that that's clearly an independent claim, we clearly oppose that and we think that it's violative of the judgment. They're asserting that they should be able to go forward and let Judge Furman decide. We say they're flouting what Your Honor actually determined, they're continuing to do exactly the same thing, and they don't want Your Honor to be able to rule on that subject matter, and that's what all of this is about.

And we did file our motion to compel their withdrawal. We did it over a month ago. And then we filed our responses in the district court, and if the matter had been resolved then, it had been resolved then. But it hasn't been resolved, and it doesn't necessarily mean that Your Honor has to resolve it immediately. But the fact of the matter is, is that all of these what he calls procedural gamesmanship is caused by them, by the violation of the stay.

And they keep on doing it and they just say, well, look at the mess that we're creating, but it's got to be both

people's fault. But the reality is it's not both people's fault. It's not my fault that when they assert a complaint again in the second amended complaint, they used the term "GM-branded" which means old GM vehicle and new GM vehicle. They used it 36 times, and then they don't want to come to Your Honor when Your Honor has already ruled that that's not something that they're supposed to do. And they do it in the context of a motion to withdraw the reference, and they do it without figuring out how they can avoid re-argument because that's all they would be doing is re-arguing.

That's what's happening here, and we think that Your Honor should enforce your order. The bellwether trial they talked about is the personal injury cases, it's not the economic loss cases which he's representing. And the fact of the matter is, is that he says that Judge Furman has been living with the complaint and there's been motion practice. There actually has been no motion practice on the second amended complaint at all.

There has been certain procedural issues, but not motion practice as to the substance of the matter, and clearly when you define what the old GM claim threshold was, it was a threshold issue. It was to give the district court and other courts guidance as to how your judgment should be interpreted as by you in the context of what is a proscribed claim and what is a legitimate claim that could be asserted against new GM.

So they're trying to cut short what has been in place in this court for the last year, which is the determination of that old GM issue. As far as discussing what happens at a meet and confer, I'm not sure what the context is that he thinks a meet and confer happened, and I'm not sure why he wants to refer to a prior hearing that Your Honor held because Your Honor understands what you said. And to show you Your Honor's words, to say he didn't catch this buzzword when it wasn't put before you, to put into context that hearing that he's talking about, that was the -- a hearing that we had on a different matter and then unscheduled Mr. Weisfelner wanted to describe a potential settlement that ultimately didn't take place with the GUC trust.

And in the context of describing that, he was asking to extend the times for people to answer so that the GUC trust wouldn't be required to answer while they were still having their pending discussion. And there was a motion that was pending before Your Honor which was the no-strike pleading, and there was a motion that was pending before Judge Furman, which was the withdrawal of the reference. And they are asking Your Honor to extend the time on the motion to withdraw the reference which was before Judge Furman. And I think it was even me that said, Your Honor, how could you extend time for a pleading that's before another court? And Your Honor agreed, and your statements there were in that context, which is that

I'm not going to grant extensions on matters that are before Judge Furman's watch, which is the motion to withdraw the reference.

That's about all I think you could say about that entire hearing. If you read the remainder of the transcript, Mr. Weisfelner apologizes to me and to the Court for having confused the Court as to what he was asking for, and for essentially having wasted everybody's time. So -- but it all comes back with Your Honor knows what you said and Your Honor knows what you intended to say, and I can't try to do any more spin on that other than to say that was the context of when all this came up.

I'll conclude with the following remark: This is not Wellness and this Celotex. Wellness did not talk about a court where there was a consent to jurisdiction enforcing its own injunction, and that's what's happening here. Thank you.

THE COURT: All right. Any surreply, Mr. Weisfelner?

MR. WEISFELNER: Yeah, just very briefly. Your Honor, for the proposition that notwithstanding Rule 5011, when there is a motion to withdraw the reference that is pending, hearings on the underlying adversary proceeding themselves ought to be deferred. I would cite Your Honor to In re NatTel LLC, Bankruptcy Court from the District of Connecticut, April of 2012, at 212 WL 1309240. And the jump cites are at 5 and 8. Likewise, Summit Global Logistics, Bankruptcy Court for the

district of New Jersey, December of 2008, 2008 WL 5953690, and the jump cite is at Page 2, both of which stand for the proposition that in deference to the district court, the bankruptcy court ought to withhold decision on motions to dismiss until the district court rules on the motion for withdrawal of the reference and jurisdiction over the adversary proceeding is ultimately determined.

THE COURT: Is there a reason that you brought those to my attention only in surreply and they're not in your brief or in anything you submitted before this minute?

MR. WEISFELNER: Your Honor, it's only because I didn't think that the construction of Bankruptcy Rule 5011(c) was going to be argued to be as broad as Mr. Steinberg argued it to be. It wasn't included in our original brief because, again, I don't know that this is really to be decided by Your Honor based on the scope of Rule 5011.

I mean, yes, I have a motion to withdraw the reference on their motion to compel, but Your Honor saw fit to go forward with today's hearing notwithstanding. You asked the question whether or not any of us have seen cases that interpret 5011 the way I suggested they ought to be, and only in response to that inquiry, Your Honor, did I think it appropriate to burden the record with additional case citations.

Your Honor, the other point I wanted to make is we

keep getting references from Mr. Steinberg with regard to Your Honor's order, and I just want to find where it is. Paragraph (c) of Paragraph 12 provides that if the counsel in a state lawsuit believes that notwithstanding the decision and its judgment, and let's again let's remember that the states were not parties to the threshold issues, but if they believe it has a good-faith basis to maintain, that its allegations, claims, or causes of action against new GM should not be stricken. It shall file a no-strike pleading with this court within 17 business days of this judgment, which they did.

The no-strike pleading shall not reargue issues that were already decided by the decision and judgment. They didn't. And beside the fact they weren't parties to the decision or judgment. If a no-strike pleading is timely filed, new GM shall have 17 business days to respond. They have. And the Court will schedule a hearing thereon if it believes one is necessary.

Now, again, nothing in that paragraph or any other provision of Your Honor's decision or judgment provided that the parties may not seek to withdraw the reference. And I guess I would ask Your Honor a question which I think every textbook suggests you never ask a question, let alone of a judge, if you don't think you know the answer. Well, Your Honor, I think I do know the answer so I'm going to take the risk.

Your Honor, I would assert that in drafting your decision and in drafting your judgment, you at no time intended to preclude parties from pursuing the right under 157 to seek to withdraw the reference because I believe that if Your Honor had so determined to prevent parties from seeking to file motions to withdraw the reference, you would have said so.

So, Your Honor, the whole notion that we are somehow violating an injunction or a stay I think is something that's made out of whole cloth. The matter is pending before Judge Furman. Let Judge Furman decide it in the first instance. If he denies the motion to withdraw the reference, we all know where we're going to be.

Until he decides the motion to withdraw the reference, I believe that today's motion, because we have a pending motion to withdraw the reference with regard to today's proceedings, ought to be either deferred or new GM's motion should be denied. Thank you, Judge.

MR. STEINBERG: Your Honor, just two quick points if I can just real quick.

THE COURT: If it's limited to --

MR. STEINBERG: To two.

THE COURT: -- the very last things that Mr. Weisfelner said.

MR. STEINBERG: Correct. Your Honor, Mr. Weisfelner has said twice and Mr. Davidson reminded me when I got back to

the table that I had not made this point. The state's obviously consented to Your Honor's jurisdiction to determine the four threshold issues and were part of the discussion with regard to the determination of it. They brought their actions after the motions to enforce were brought, and they are represented by the same counsel that had agreed to the stay stipulations.

And they said, we only want to determine whether we should be able to go into the state court versus the MBL, but otherwise we're consenting to allow this Court -- we're agreeing to a voluntary stay, and we're agreeing to allow this Court to determine the four threshold issues. So when he says that they were not bound by this, they are bound by that, and they were part of these proceedings, and, in fact, Mr. Weisfelner's co-counsel is the counsel for the states in these matters.

The second point is that Wellness was a case where the parties had consented to the jurisdiction, and then they were trying to argue afterwards based on the Stern v. Marshall decision that the bankruptcy courts shouldn't hear their matter. It was in effect a withdrawal of a previous consent, and there the Supreme Court said the consent was given and the bankruptcy court was free to act.

And that's the circumstance here where there are limitations as to what a party can do or can't do once they've

consented to the jurisdiction of the Court. They don't get a chance to say, oh, you know what, I don't really like what's going on here, I should move somewhere else. Thanks.

THE COURT: All right. Everybody sit in place for a second.

(Pause in proceedings)

THE COURT: All right. Ladies and gentlemen, I am determining now that under the Rule 5011, with respect to this proceeding, I do have the discretion to decide whether or not I will rule on the issue before me, and I'm going to decline to abstain, if you will, from deciding it. Putting it a different way, I am going to decide this issue, and the ping-pong is going to stop.

With respect to the remainder of the controversy, which is for the avoidance of doubt, not the underlying issue as to withdrawal of the reference, but whether a bankruptcy judge appointed under Article I has the ability to stay parties from proceeding before a bankruptcy -- excuse me, an Article III district judge, I will be deciding that issue in a written decision, probably in the next 24 to 48 hours.

So that is as much as I'm ruling on off the bench, and I will be issuing a decision with respect to the remainder as soon as practical. We're adjourned.

(Proceedings concluded at 10:51 a.m.)

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C E R T I F I C A T I O N

I, Ilene Watson, court-approved transcriber, hereby certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

ILENE WATSON, AAERT NO. 447 DATE: August 13, 2015

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